

STATE OF SOUTH CAROLINA

BEFORE THE PUBLIC SERVICE COMMISSION

DOCKET NOS. 2017-370-E, 2017-305-E, AND 2017-207-E

In Re:)
)
 Joint Application and Petition of South)
 Carolina Electric & Gas Company and)
 Dominion Energy, Incorporated for Review)
 and Approval of a Proposed Business)
 Combination between SCANA Corporation)
 and Dominion Energy, Incorporated, as May)
 Be Required, and for a Prudency)
 Determination Regarding the Abandonment)
 of the V.C. Summer Units 2 & 3 Project and)
 Associated Customer Benefits and Cost)
 Recovery Plan)

PRE-HEARING BRIEF OF
 SOUTH CAROLINA COASTAL
 CONSERVATION LEAGUE AND
 SOUTHERN ALLIANCE
 FOR CLEAN ENERGY

The Public Service Commission (“Commission”) should not approve the proposed merger between SCANA Corporation and Dominion Energy, Inc. (“Dominion”) unless additional conditions are imposed to protect South Carolina Electric and Gas (“SCE&G”) customers. The Commission has the statutory duty to determine whether the merger is in the best interest of customers, not SCANA shareholders. This “public interest” standard must take into account state policy goals, including the goals of the South Carolina Energy Efficiency Act, S.C. Code § 48-52-10, *et seq.* (the “Energy Plan Act”).

As proposed, the merger fails to offer sufficient customer protections to meet the public interest test. In order for the merger to be in the best interest of customers, the Commission should impose conditions to: 1) decrease any remaining costs from the abandoned nuclear project through securitization should that option become available, 2) require that the merged company conduct open market bidding to meet future energy

needs, and 3) restrict affiliate transaction self-dealing and guarantee third-party competition if the utility needs additional gas transmission capacity. These conditions will lower costs for customers and make certain that a debacle like the V.C. Summer disaster never happens again.

I. Introduction

On January 12, 2018, SCE&G and Dominion filed a joint application for approval of a proposed business combination between SCANA Corporation and Dominion. Although the business combination technically involves two utility holding companies, the heart of this transaction is Dominion's acquisition of SCE&G's utility franchise territory and captive customer base. As such, this transaction falls squarely within the Commission's jurisdiction, and must receive approval pursuant to S.C. Code § 58-27-1300.

The Commission must prioritize SCE&G customer interests in its decision whether to approve the merger, and if so, on what conditions. History clearly shows the Commission cannot trust the utilities to protect customer interests. SCE&G and SCANA's mismanagement of ratepayer funds is well-documented, most notably in SCE&G's decision to pour billions of dollars into the failed V.C. Summer project. Based on Dominion's track record in Virginia, the Commission should also be deeply skeptical of how Dominion will treat SCE&G ratepayers if the merger proceeds.

Dominion has consistently written and pushed legislation to limit Virginia State Corporation Commission ("SCC") oversight and to overcharge customers. In 2015, Dominion authored legislation that suspended SCC review of its earnings and prohibited the SCC from either ordering refunds of over-earnings or lower rates. Virginia Acts of

Assembly, Ch. 6 (2015). As a result, in just a two-year period in 2015 and 2016, Dominion earned, and kept, between \$327.8 million and \$705.2 million above its authorized rate of return.¹ Legislation that Dominion introduced to “unwind” the 2015 law did not fully compensate customers and initially allowed for “double-dipping.” Had it not been amended, the legislation would have authorized Dominion to invest excess profits from 2015 to 2018 into new capital projects and then charge its customers 100% of the cost of those projects plus a rate of return. H.B. 1558, Amendment Feb. 12, 2018.² Dominion also authored legislation in 2018 to override two SCC decisions that found Dominion’s proposals to spend roughly \$2 billion to bury power lines would not be cost effective.³ The 2018 legislation Dominion sponsored eliminates the SCC’s authority to deny cost recovery for such projects. SB 966 (Mar. 9, 2018) (amending Va. Code § 56-585.1(A)(6)).

Perhaps more directly relevant to the Commission’s consideration is how Dominion forces its captive customers to underwrite projects for Dominion’s unregulated affiliates. In 2014 Dominion partnered with Duke Energy and the Southern Company to form Atlantic Coast Pipeline, LLC to build the Atlantic Coast Pipeline, an interstate pipeline that will travel from West Virginia, through Virginia, down into North Carolina.

¹ Status Report: Implementation of the Virginia Electric Utility Regulation Act Pursuant to § 56-596 B of the Code of Virginia (Sept. 1, 2016) (“2016 Report”) at 6, https://www.scc.virginia.gov/comm/reports/2016_veur.pdf. Calendar year 2015 was the first year of the rate freeze for Dominion Energy and Status Report: Implementation of the Virginia Electric Utility Regulation Act Pursuant to § 56-596 B of the Code of Virginia (Sept. 1, 2017) (“2017 Report”) at 6-7, https://www.scc.virginia.gov/comm/reports/2017_veurcomb.pdf. The SCC will not have a final calculation of 2017 over-earnings until Dominion’s next rate case, which—due to 2018 legislation that Dominion sponsored—will not occur until 2021.

² Gregory Schneier, *Dominion bill passes Va. House with key change aimed at helping customers*, The Washington Post (Feb. 18, 2018), https://www.washingtonpost.com/local/virginia-politics/dominion-bill-passes-va-house-with-key-change-aimed-at-helping-consumers/2018/02/13/72c99132-10dd-11e8-9570-29c9830535e5_story.html?noredirect=on&utm_term=.dabe65d7d32d.

³ Application of Virginia Electric and Power Company, For revision of a rate adjustment clause: Rider U, new underground distribution facilities, for the rate year commencing September 1, 2017, Case No. PUE-2016-00136, Final Order at 8-9 (Sept. 1, 2017), *available at* <http://www.scc.virginia.gov/docketsearch/DOCS/3hbv01!.PDF>.

To get Federal Energy Regulatory Commission (“FERC”) authorization for such a project, Dominion needed to prove the project had a market. To demonstrate that market need, Dominion presented to FERC several signed multi-decade, multi-million dollar contracts that various users had committed to. Those users, however, are simply Dominion, Duke, and Southern Company’s regulated utility arms that all have captive customers who have to pay for natural gas pipeline capacity contracts through their annual fuel rider.

In various proceedings before the Virginia State Corporation Commission, Dominion has admitted that it signed the Atlantic Coast Pipeline contract without ever studying whether it needed the capacity to fuel its power plants⁴ and without ever studying whether the pipeline contract was the lowest cost option to secure fuel supply.⁵ Despite this utter lack of planning, Dominion intends to saddle its customers with the full cost of that contract, regardless of whether Dominion ever uses the pipeline to fuel its plants.⁶ Gregory Lander, who has provided testimony in this proceeding, has estimated that the net cost to Dominion’s Virginia customers will range between \$2.5 and \$3 billion, all for an entirely unnecessary pipeline contract that Dominion does not need. South Carolina customers have already paid billions of dollars for the privilege of having their utility force their investment in a useless, overpriced facility. This Commission, as part of approving the merger, must protect customers from future abuses.

⁴ Virginia Electric and Power Company’s Integrated Resource Plan filing pursuant to Va. Code § 56-597 et seq., Case No. PUR-2017-00051, *Dominion Response to Environmental Respondents’ Sixth Set of Interrogatories*, attached as Exhibit A.

⁵ Virginia Electric and Power Company’s Integrated Resource Plan filing pursuant to Va. Code § 56-597 et seq., Case No. PUR-2018-00065, *Testimony of Glenn A. Kelly*, Hearing Transcript at 216:10-18, available at <http://www.scc.virginia.gov/docketsearch/DOCS/4bxy01!.PDF>.

⁶ Virginia Electric and Power Company - To revise its fuel factor pursuant to Va. Code § 56-249.6, Case No. PUR-2017-00058, *Dominion Responses to Environmental Respondents’ Second Set of Interrogatories*, attached as Exhibit B.

Dominion's environmental track record is equally concerning. For example, Dominion's coal ash management in Virginia is so bad that the Virginia General Assembly has twice passed a moratorium to prevent Dominion from closing those ash facilities in accordance with Dominion's insufficient plans.⁷

When evaluating this proposed merger, the Commission must put ratepayers first. History in both South Carolina and Virginia shows that neither SCANA nor Dominion will prioritize customers without vigorous regulatory oversight. The question is not whether SCANA shareholders have received the best offer for their equity, but rather whether SCE&G customers will be the same, better, or worse off as a result of the merger.

II. The Commission has jurisdiction over the proposed merger.

The provisions of S.C. Code § 58-27-1300 apply in this proceeding.⁸ Section 58-27-1300 expressly states that “[n]o electrical utility, without the approval of the commission . . . may sell, . . . transfer, . . . or merge its utility property, powers, franchises, or privileges, or any of them” S.C. Code § 58-27-1300. This merger proposes to do exactly that, and there can be no legitimate argument that the ultimate disposal of SCE&G, its assets, and its captive customers, lies at the heart of this merger. *See* Application at 3 (“SCE&G is at a critical crossroads in its greater than one-hundred seventy (170) year history of operations as a South Carolina public utility. And its fate may well be determined through the decisions made on this Joint Petition.”). Although the Applicants claim that Commission approval is required only for the proposed

⁷ Virginia S.B. 807 (2018), *available at* <https://lis.virginia.gov/cgi-bin/legp604.exe?181+sum+SB807>, and Virginia S.B. 1398 (2017), *available at* <https://lis.virginia.gov/cgi-bin/legp604.exe?171+sum+SB1398>.

⁸ Application at 2. Applicants concede that Commission “approval may take the form of a formal approval of the business combination if the Commission determines that formal approval of the Merger is required under S.C. Code § 58-27-1300.”

Customer Benefits Plan, in reality, no part of the merger may occur without Commission approval. S.C. Code § 58-27-1300.⁹

The Code includes a broad definition of what constitutes a “utility,”¹⁰ and the Commission has previously held that holding companies are public utilities that must obtain Commission approval before engaging in major transactions in accordance with code section 58-27-1300.¹¹ The Commission has also used its authority under 58-27-1300 to set a hearing for a merger between holding companies where the “primary impact” of the merger and acquisition was on the utility subsidiary and its ratepayers.¹²

The Commission’s jurisdiction over this merger under § 58-27-1300 is also well-supported by the broad authority granted to it by the legislature to regulate utilities and protect ratepayers. S.C. Code § 58-3-140 (“the commission is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and

⁹ South Carolina electric utility law also applies because Dominion formed Sedona Corp. “*solely to accomplish the Merger.*” Application at 10 (emphasis added). S.C. Code § 58-27-30 (“Corporations formed to acquire property or to transact business which would be subject to the provisions of this chapter and corporations possessing franchises, powers or privileges for any of the purposes contemplated by this chapter shall be deemed to be subject to the provisions of this chapter, although no property may have been acquired, business transacted or franchises, powers or privileges exercised.”).

¹⁰ The South Carolina code defines “electrical utility” to include “persons and corporations . . . *owning* or operating in this State equipment or facilities for generating, transmitting, delivering, or furnishing electricity for street, railway, or other public uses or for the production of light, heat, or power to or for the public for compensation” S.C. Code 58-27-10(7) (emphasis added); *see also* S.C. Reg. 103-302.6 (almost identical definition). The term “corporation” includes “all bodies corporate, joint-stock companies or associations, domestic or foreign, their lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships” S.C. Code 58-27-10(3).

¹¹ Order 2002-20 at 8, Docket 2001-441-E (“the commission is of the opinion, and so finds, that *the company* [Duke Energy Corporation] *is a public utility* subject to the jurisdiction of this Commission with respect to its retail rates, services and securities issues”)(emphasis added); *id.* at 7 (“The Commission, over Duke Energy’s objection, concludes that S.C. Code Section 58-27-1300 applies to the proposed Westcoast transaction and that the Commission’s approval under that statute is therefore required before the transaction may be consummated.”); Order 1997-310 at 8, Docket 1996-383-E (“the Commission . . . finds[] that the Company [Duke Power Company] is a public utility subject to the jurisdiction of th[e] Commission”); *id.* at 4 (“The merger agreement between Duke and PanEnergy . . . was subject to the approval of this Commission pursuant to Section[] 58-21-1300”).

¹² Order No. 2011-611, Docket No. 2011-158-E. Order No. 2011-611 was issued before Duke and Progress took the position that the Commission need only approve a “joint dispatch agreement” rather than a merger.

measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State.”). The General Assembly created the Commission “to regulate . . . utilities serving the public as, and to the extent, *required by the public interest*”¹³ In protecting ratepayers, particularly when reviewing transfer of utility franchises, the Commission can and should apply a public interest review and place ratepayer interests first.

III. The Commission must review electric utility mergers through a public interest lens.

When applying code section 58-27-1300 to electric utility mergers in the past, the Commission has adopted the same “best interest of the public” standard of review that applies to other, non-electric utility mergers and property transfers.¹⁴ The Commission has specifically focused on the long-term impacts of transactions on retail rates and charges and on the utility’s retail cost of service.¹⁵ And the Commission has consistently approved transactions and stipulations that protect customers from any adverse effects and provide those customers with quantifiable benefits.¹⁶

¹³ 1980 Act No. 440, Section 1, https://www.scstatehouse.gov/sess103_1979-1980/bills/3236.htm (emphasis added).

¹⁴ See, e.g., S.C. Reg. 103-504 (“No existing public utility supplying wastewater disposal . . . shall hereafter sell, acquire, transfer, begin the construction or operation of any utility system, or of any extension thereof, by the sale of stock or otherwise, without first obtaining from the commission a certificate that the sale, transfer, or acquisition is *in the public interest* . . .”) (emphasis added); S.C. Reg. 103-704 (“No existing public utility supplying water . . . shall hereafter sell, acquire, transfer, begin the construction or operation of any utility system, or of any extension thereof, by the sale of stock or otherwise, without first obtaining from the commission a certificate that the sale, transfer or acquisition is *in the public interest* . . .”) (emphasis added).

¹⁵ Order No. 2006-405 at 1, 4, Docket No. 2006-156-E (sale of spare transformers in the public interest because it facilitates preparedness in the event of a terrorist attack and lowers “overall future costs” to Duke’s ratepayers); Order No. 2004-245 at 2, Docket No. 2003-364-E (leaseback arrangement for Combustion Turbine in public interest because it will result in “substantial tax savings” for the utility).

¹⁶ See, e.g., Order No. 2002-20 at 7, 9, Docket No. 2001-441-E (stipulation with Consumer Advocate to protect retail customers from any “detrimental” impacts of Duke Energy and Westcoast Energy transaction and issuance of securities on rates and charges is in customers’ “best interest”); Order No. 2000-229 at 7, Docket No. 1999-434-E/C (holding company structure that will “allow improved regulatory oversight of CP&L’s and NCNG’s utility operations by providing a clear separation between utility and non-utility activities,” along with stipulation with Consumer Advocate to revise Code of Conduct, are in best interest).

For example, in Docket No. 2005-210-E, concerning a merger between Duke and Cinergy Corporation, the Commission paid particular attention to the benefits of minimizing long-term resource plan costs and rate impacts, ensuring high-quality performance, and encouraging low-waste consumption. The Commission asked Duke to respond to specific inquiries regarding the effect of the proposed transaction on the public interest, including: (1) whether Duke's claims about "[i]ncreased efficiency, reduced operating costs, increased financial flexibility, and higher earnings after one year" could be quantitatively substantiated, (2) what the long term impact to rates would be and why the proposed rate reduction was temporary, (3) what steps Duke planned to take to "eliminate the possibility of cross-subsidization between the regulated and unregulated portions of the combined companies, and among the various jurisdictions in which the new company will operate," and (4) what Duke's plans were to "develop and maintain renewable energy resources." Order No. 2005-606 at Ex. A, Docket No. 2005-210-E. Given Duke's responses to the inquiries, and following a stipulation with the Office of Regulatory Staff to exclude expenses associated with the merger from retail costs and to reduce rates through a rate decrement rider, the Commission found the merger was in the public interest. Order No. 2005-684 at 3-4, Docket No. 2005-210-E.

This Commission's prior decisions applying the public interest standard to mergers are consistent with those in other jurisdictions. *See, e.g.,* Wisconsin Pub. Serv. Comm'n, *App. of Wisconsin Energy Corp.*, Docket No. 9400-YO-100 (May 21, 2015) ("The interpretation of best interests [of utility customers] is fact specific and is, in large

of the State of South Carolina); Order No. 1997-310 at 7-8, 10, Docket No. 1996-383-E (emphasizing that merger between Duke Power Company and PanEnergy Corporation will not adversely affect retail rates, and approving public interest stipulation with Consumer Advocate to ensure: 1) no cost increases attributable to merger will be reflected in electric operations and cost reductions are properly allocated, 2) any affiliate pricing policy and procedure changes will be reported to Commission).

part, a policy decision of this Commission. Case law, statutory construction principles, together with the facts of this proceeding, indicate that ‘best interests’ . . . means something more than finding no harm resulting from the transaction”) (requiring, among other merger conditions, specific resource planning submissions to ensure that unnecessary capital costs related to new generation are avoided); *Montana Pub. Serv. Comm’n, Jt. App. of NorthWestern Corp. and Babcock & Brown Infrastructure Ltd., et al.*, Docket No. D2006.6.82, Order No. 6754e (Aug. 1, 2007) (applying a no-harm-to-consumers standard and denying merger application where utility company did not support statements of good intentions with substantive and binding commitments to meet the expectations of eight evaluation factors; merger would have increased risk of higher rates and inadequate service).

Even outside of the merger context, broad public interest principles guide Commission decisions and support the application of a public interest review in this case. The Commission routinely evaluates electric utility contracts to determine whether they support the public interest. S.C. Code § 58-27-980. The Commission also oversees transactions between any utility and any entity that “either exercises or is in position to exercise, by reason of ownership or control of securities or for any other cause, any reasonably substantial control over the business or policies of any electrical utility.” S.C. Code § 58-27-2090. The Commission has explained in its interpretation of this section that it has the authority to develop “polic[ies]” that “seek to ensure the protection of the regulated utility ratepayers” from the activities of any unregulated entities, and that such policies are “in the public interest.”¹⁷

¹⁷ Order No. 92-931 at 8, Docket No. 89-230-E/G.

IV. When considering the public interest, the Commission must factor in the South Carolina Energy Plan Act.

The Commission must evaluate the proposed merger to determine whether it benefits SCE&G customers, not whether it best compensates SCANA shareholders. Moreover, SCE&G's customers need rate relief from the failed V.C. Summer project, but they also need protections from future utility abuses. As structured by the Applicants, however, the Application puts the analysis exactly backwards. The Application states that Commission approval of the Customer Benefits Package is a condition precedent to the overall merger. The merger itself, however, clearly is structured to benefit shareholders. *See, e.g.*, Application Exhibit 1 at 1 (“The board of directors of the Company (the ‘Company Board’) has (a) determined that it is in the best interests of the Company ***and the shareholders*** of the Company that the Company enter into this Agreement”) (emphasis added).

A utility franchise is “not like a taxi medallion; it is not a private commodity to be sold to the highest bidder.”¹⁸ Rather, in South Carolina, a utility franchise is an obligation to serve reliably at the lowest feasible cost. S.C. Code § 58-27-1510 (utilities must furnish “adequate, efficient and reasonable service”). It is wholly insufficient for SCE&G and Dominion to claim that a merger is in the public interest because it will allow SCE&G to provide things like “safe and reliable” electric service. Application at 29. These items cannot be credited as “benefits” because they are ***mandatory*** for any utility operating a franchise under the Commission’s supervision. The Commission must consider whether the merger offers ratepayers quantifiable benefits in addition to what is required by statute. In other words, what is Dominion bringing to SCE&G customers that

¹⁸ Exhibit GRID2.0 (A), Direct Testimony of Scott Hempling before the Maryland Public Service Commission in Merger Case of Exelon Corporation, Case No. 1119 (November 3, 2014).

they cannot currently get from SCE&G? The answer must involve considerations of future operations, not simply rate relief from the failed nuclear project, especially considering the comprehensive testimony from ORS and others that offer pathways to greater rate relief from V.C. Summer than Dominion has offered.

In addition, the Commission is bound to consider, in reviewing the public's interest in the unprecedented proposal currently before it, the Energy Plan Act passed by the General Assembly in 1992. That Act adopts a "comprehensive state energy plan that maximizes to the extent practical environmental quality and energy conservation and efficiency and minimizes the cost of energy throughout the State." S.C. Code § 48-52-210. The General Assembly clearly intended the law to shape how utilities and the Commission operated under S.C. Code § 58-27-10, *et seq.*

The General Assembly articulated its priorities explicitly in terms of the "public interest." S.C. Code § 48-52-210(10) (The energy plan must, in part, "ensure that state government is organized appropriately to handle energy matters *in the best public interest.*") (emphasis added). The Commission, as part of state government, must regulate SCE&G to realize that public interest. Specifically, the Commission, in this proceeding, must ensure that the merger would further the following statutory goals:

- (1) ensure access to energy supplies at the lowest practical environmental and economic cost;
- (2) ensure long-term access to adequate, reliable energy supplies;
- (3) ensure that demand-side options are pursued wherever economically and environmentally practical;
- (4) encourage the development and use of clean energy resources, including nuclear energy, energy conservation and efficiency, and indigenous, renewable energy resources;
- (5) ensure that basic energy needs of all citizens, including low income citizens, are met;
- (6) ensure that energy vulnerability to international events is minimized;

- (7) ensure that energy-related decisions promote the economic and environmental well-being of the State and maximize the ability of South Carolina to attract retirees, tourists, and industrial and service-related jobs; [and]
- (8) ensure that short-term energy decisions do not conflict with long-range energy needs[.]

...
S.C. Code § 48-52-210(B).

The Customer Benefits Plan largely addresses how the utilities in this docket will resolve the outstanding and previously collected costs of V.C. Summer Units 2 and 3. *See* Application at 64, Ex. 1 – Agreement and Plan of Merger by and among Dominion Energy, Inc., Sedona Corp. and SCANA Corporation (Jan. 2, 2018). Neither the benefits package nor the remainder of the Application adequately address how Dominion’s acquisition of SCE&G advances the Energy Plan Act public interest goals.

In fact, the Application is silent on some of the most critical aspects of South Carolina’s energy future. The V.C. Summer disaster leaves ratepayers saddled with a multi-billion dollar burden and the Application offers only crumbs. The Application contains no information about how the emerging utility will “ensure access to energy supplies at the lowest practical environmental and economic cost.” The Application contains no demonstration to “ensure that demand-side options are pursued wherever economically and environmentally practical.” The Energy Plan Act also emphasizes “the development and use of clean energy resources, including nuclear energy, energy conservation and efficiency, and indigenous, renewable energy resources.” Clearly SCE&G has failed to develop nuclear resources in a cost-effective manner. The Application, however, contains no information for how it—or its successors—will develop energy conservation, efficiency and renewable energy resources to “ensure access to energy supplies at the lowest practical environmental and economic cost” and to

“ensure that demand-side options are pursued wherever economically and environmentally practical.”

Better energy efficiency programs and cost-effective renewable energy are critical benefits that any merger resulting from the V.C. Summer abandonment should provide to help ratepayers lower the high electric bills they have been saddled with as a result of the project. Whether to defer or avoid investment in expensive generation and transmission infrastructure, or to help low-income customers afford basic electric service, the Energy Plan Act clearly requires that they play a prominent role in future utility plans. Among large utilities, both Dominion and SCE&G rank near the bottom for their energy efficiency programs,¹⁹ and the cost savings that SCE&G’s programs provide to customers have declined precipitously for four straight years.²⁰ This Commission must demand more information from the Applicants to understand how they plan to improve their offerings and advance the public interest as articulated in the Energy Plan Act.

In short, if approved, the proposed merger will transfer all of SCE&G’s assets and captive customer base from one utility holding company to another. Nothing in the Application, however, identifies how that transfer achieves the public interest goals identified in the Energy Plan Act. In fact, the Application’s discussion of ratepayer impacts is entirely centered on the proposed Customer Benefits Plan, which is only one possible path in the wake of the V.C. Summer catastrophe. Apart from the Benefits Plan, the only advantage for ratepayers that the Application identifies is that Dominion would control SCE&G’s territory. Application at 29. As discussed above, however, the

¹⁹ Dominion is the second worst large utility in the country when it comes to energy efficiency according to the American Council for an Energy-Efficient Economy. <http://aceee.org/research-report/u1707>.

²⁰ In the Matter of: South Carolina Electric & Gas Company’s 2018 Annual Update on Demand Side Management Programs and Petition to Update Rider, Docket No. 2018-42-E, Comments of the South Carolina Coastal Conservation League and Southern Alliance for Clean Energy at p. 1.

Companies have provided insufficient proof that Dominion control would be an advantage. Dominion, just like SCE&G and SCANA, has a long track record of squeezing as much money out of its customers as it can possibly get away with. Without strong protections from this Commission consistent with the State Energy Plan, there is no reason to think the proposed merger would be in the public interest.

V. Additional conditions are required to ensure the proposed merger is in customers' best interest.

To protect customers' interests, the Commission should: 1) allow Dominion to pass on only those V.C. Summer nuclear costs that were prudently incurred, and decrease any remaining costs from the abandoned nuclear project through securitization, should that option become available through legislation, 2) require that the merged company conduct open market bidding to safeguard customers when future energy needs arise, and 3) ensure that Dominion does not use affiliate transactions to shift the cost of unneeded interstate natural gas pipeline construction projects onto captive utility customers. These conditions are necessary to ensure that the merger does not increase customer costs in the long-term as a result of self-dealing between Dominion and its affiliates. It is not enough for the Commission to take SCE&G and Dominion at their word when there are obvious internal incentives for self-dealing at the expense of ratepayers. Instead, the Commission must protect customers by requiring the Companies to engage in processes that ensure competition and ensure that energy efficiency and renewable energy options are pursued wherever "economically and environmentally practical."

The imposition of these conditions is further supported by the practice of other Commissions that have faced important merger decisions. *See* Emmett N. Ellis, IV et al., *The Evolving Public Interest—Recent Decisions in Utility Merger Proceedings*, ABA

Infrastructure and Regulated Industries Section, Summer 2016, *available at* <https://www.huntonak.com/images/content/3/6/v3/3690/Evolving-Public-Interest-Recent-Decisions-in-Utility-Merger-Proc.pdf> (describing situations where Commissions have considered efficiency and renewable energy investment when evaluating whether a merger is in the public interest, and where Commission's evaluating mergers have approved settlements to improve efficiency offerings).

The requirement that the Commission guarantee third-party competition where affiliates are involved is also consistent with the practice of other Commissions, which regularly consider the potential for affiliate transaction abuse when determining whether a merger is in the public interest, and establish safeguards where there is uncertainty about whether the Commission will otherwise be able to exercise oversight moving forward. *See, e.g., Re SCEcorp*, 40 CPUC 2d 159, 122 P.U.R.4th 225, 1991 WL 501779 (May 8, 1991) (concluding merger was not in the public interest because the vertical merger of electric utility operations and an unregulated supplier would increase self-dealing opportunities, could increase ratepayer costs and lead to adverse competitive impacts, and would facilitate the evasion of regulation); *In Re Bangor Hydro-Elec. Co.*, 207 P.U.R.4th 247, 2001 WL 267074 (Jan. 5, 2001) (extracting assurance that Commission would be granted oversight over affiliate transactions).

VI. Conclusion

SCE&G's captive customers have borne the brunt of the Company's risky business practices for far too long. The acquisition of SCE&G by Dominion is an opportunity for this Commission to provide greater protection for SCE&G's customers by ensuring a brighter energy future—one that is low-risk, low-cost, and clean. This

Commission has the authority and responsibility to provide assurances about that future pursuant to S.C. Code § 58-27-1300 and the Energy Plan Act, and SCE&G's customers deserve no less. Therefore, the Commission should determine that the proposed merger is not in the public interest nor consistent with the Energy Plan Act, without additional conditions to:

1) Decrease any remaining costs from the abandoned nuclear project through securitization, should it become available through legislation, as outlined by Witnesses Binz and Varadarajan;

2) Require that the merged company conduct open market bidding to meet future energy needs, as outlined by Witness Binz, and

3) Restrict affiliate transaction self-dealing and guarantee third-party competition if the utility makes a legitimate case that additional gas transmission capacity is needed, as outlined by Witness Lander.

Respectfully submitted this 26th day of October, 2018.

/s/ J. Blanding Holman, IV

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Exhibit A

Virginia Electric and Power Company
Case No. PUR-2017-00051
Environmental Respondents
Sixth Set

The following response to Question No. 20 of the Sixth Set of Interrogatories and Requests for Production of Documents Propounded by the Environmental Respondents received on July 25, 2017 has been prepared under my supervision.


Ted Fasca
Advisor - Generation System Planning
Virginia Electric and Power Company

Question No. 20

Reference the Company's response to ER Set 2-33.

- a) Has the Company performed an analysis in this IRP of whether it can meet its service obligations without using natural gas from the Atlantic Coast Pipeline (regardless of whether the Company's generating assets perform at the same capacity factors as those identified in this year's IRP)?
- b) If not, please explain why.
- c) If so, please provide that analysis.
- d) Does the Company contend that it cannot meet its service obligations without the Atlantic Coast Pipeline?
- e) Does the Company contend that it can meet its service obligations without the Atlantic Coast Pipeline but only by increasing costs to its customers?

Response:

(a)–(c) No, the Company did not perform such an analysis for purposes of this or any prior Plan analysis. The Company's objective in the 2017 Plan is to identify a mix of resources necessary to meet its customers' projected energy and capacity needs in an efficient and reliable manner at the lowest reasonable cost, while considering future uncertainties. The Company's options for meeting these future needs are: i) supply-side resources, ii) demand-side resources, and iii) market purchases. A balanced approach, which includes the consideration of options for maintaining and enhancing rate stability, energy independence, economic development, as well as input from stakeholders, will help the Company meet growing demand while protecting customers from a variety of potential negative impacts and challenges.

(d)-(e) The Company objects to this request as not relevant or reasonably calculated to lead to the production of admissible evidence in this Integrated Resource Plan proceeding on the grounds that the availability and/or development of additional interstate natural gas pipeline capacity resources is not the subject of the Plan, as discussed in the response to subparts (a)-(c) above. Notwithstanding and subject to the foregoing objections, the Company provides the following response.

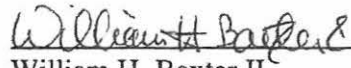
Natural gas is largely delivered on a just-in-time basis. Current interruptions on any single pipeline are manageable, but as the Company and the electric industry shift to a heavier reliance on natural gas, additional actions, including securing additional firm natural gas pipeline transportation service, are needed to ensure future system reliability and rate stability for customers.

ACP is a geographically diverse pipeline that will provide access to competitively-priced, domestic natural gas supply and will deliver those supplies to strategic points in the Company's service territory. After ACP is completed, it will provide access to natural gas supply basin (Marcellus and Utica) trading hubs such as South Point which historically have exhibited lower price and price volatility than trading hubs in Virginia (see 2017 Plan pages 133-135). The incremental capacity provided by ACP will support a portion of the natural gas needs for the Company's existing power generation with enhanced fueling flexibility and reliability. ACP will also allow for future, lower-cost pipeline capacity expansions with limited environmental impact.

Exhibit B

Virginia Electric and Power Company
Case No. PUR-2017-00058
Environmental Respondents
Second Set

The following objections and response to Question No. 2-18 of the Second Set of Interrogatories and Requests for Production of Documents propounded by the Environmental Respondents received on June 8, 2017 have been prepared under my supervision as they relate to legal matters.



William H. Baxter II
Senior Counsel
Dominion Energy Services, Inc.

Question No. 2-18

Reference the Company's response to VCFUR Set 2-2, which states that "The Company purchases firm transportation capacity to ensure that a reliable supply of natural gas is available at all times, in order to provide reliable electrical service to its customers. Therefore, the fixed gas expenses are not dependent on the amount of gas used or the amount of electricity produced at the Company's gas-fired generation units."

- a) Please explain whether the Company recovers the costs of these firm transportation contracts from its jurisdictional customers regardless of "the amount of gas used or the amount of electricity produced at the Company's gas-fired generation units."
- b) Please quantify the annual cost VPSE will incur for the firm transportation services it has contracted for on the Atlantic Coast Pipeline.
- c) If no DEV-owned asset consumes gas sourced from the Atlantic Coast Pipeline, and if VPSE is unable to release or resell 100% of its reserved Atlantic Coast Pipeline capacity, please explain whether VPSE will charge DEV for the unused, unreleased capacity.

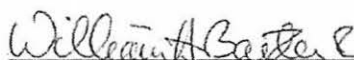
Response:

The Company objects to subparts (b-c) of this request as not relevant to the subject matter involved in this proceeding and not reasonably calculated to lead to the discovery of admissible evidence in this case. No costs associated with the Atlantic Coast Pipeline have been requested for recovery from customers through the Company's fuel factor in this proceeding. Subject to and notwithstanding these objections, the following response applies:

- (a) See the response to Question No. 2-11 of this set.

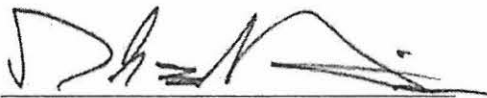
Virginia Electric and Power Company
Case No. PUR-2017-00058
Environmental Respondents
Second Set

The following response to Question No. 2-1 of the Second Set of Interrogatories and Requests for Production of Documents propounded by the Environmental Respondents received on June 8, 2017 has been prepared under my supervision as it relates to legal matters.



William H. Baxter II
 Senior Counsel
 Dominion Energy Services, Inc.

The following response to Question No. 2-1 of the Second Set of Interrogatories and Requests for Production of Documents propounded by the Environmental Respondents received on June 8, 2017 has been prepared under my supervision as it relates to the Transco/Brunswick contract referenced in this request.



Dale E. Hinson
 Manager, Gas Supply
 Dominion Energy Fuel Services, Inc.

Question No. 2-1

Please describe how Virginia Power Services, Inc. ("VPSE") recovers the costs for Firm Transportation Services pursuant to its various precedent agreements. Since the Transco/Brunswick contract is a firm transportation agreement, explain whether VPSE pays the recourse rate regardless of whether VPSE or the Company actually uses that capacity. Is the entire cost of this Transco/Brunswick contract billed to Dominion Energy Virginia (DEV) or is only the prorated portion billed that corresponds to DEV's actual gas consumption?

Response:

Under the affiliate fuel procurement structure most recently approved by the Commission in Case No. PUE-2014-00062, Virginia Power Services Energy Corp., Inc. ("VPSE") is the entity that contracts with third-parties for firm transportation services. Under the Fuel Management Agreement most recently approved by the Commission in Case No. PUE-2014-00062, the Company pays VPSE for the actual costs that VPSE incurs in providing fuel procurement and related risk management services. These costs are fully reviewed by the Commission and the

Commission Staff ("Staff") for reasonableness and prudence in the Company's annual fuel factor case pursuant to Va. Code § 56-249.6.

Regarding the Transco/Brunswick contract referenced in this request, the entire amount is paid regardless of usage based on the negotiated rate according to the terms of the contract. As noted in the response to Question No. 9 of VCFUR's Second Set, the Company can release excess firm pipeline transportation capacity, with such releases credited to customers in the Company's fuel factor and subject to true-up. As indicated in the preceding paragraph, this amount would be billed to the Company and reviewed by the Commission and the Staff in a fuel factor proceeding where the Company's proposed fuel rate included this amount.